

Arizona Department of Health Services (ADHS) Tribal Consultation Policy

1. Introduction

The mission of the Arizona Department of Health Services (ADHS) is to ensure the delivery of comprehensive public health services to the general population of Arizona including behavioral health services for the Medicaid eligible and seriously mentally ill populations. ADHS and Indian Tribes in the State of Arizona share the common goal of decreasing health disparities and maximizing access to critical health services. In order to achieve this goal, it is essential that ADHS and Indian Tribes engage in open, continuous, and meaningful consultation. True consultation consists of ongoing information exchange and mutual understanding which leads to informed decision-making.

2. Background

A unique government-to-government relationship exists between Indian Tribes and Federal and State Governments. Since the formation of the Union, the United States has recognized Indian tribes as sovereign nations. Treaties and laws, together with court decisions, have defined a relationship between Indian Tribes and the Federal Government that is unlike that between the Federal Government and any other group of Americans. The Federal Government has enacted numerous laws and regulations that establish and define a trust relationship with Indian Tribes (see Appendix A). As a state agency responsible for administering federal programs, these regulations play a significant role in the ADHS Tribal Consultation Policy.

3. Policy

The guiding principle of this Policy is to ensure that, pursuant to the special relationship between the Indian Tribes and Federal and State Governments, reasonable notice and opportunity for consultation with Indian Tribes is provided by the ADHS Administration regarding high-level policy changes that significantly impact Indian Tribes in the State of Arizona. High-level policy changes that significantly impact Indian Tribes refer to actions that have substantial Tribal implications with direct effects on one or more Indian Tribes, on the relationship between the State of Arizona and Indian Tribes, or on the distribution of power and responsibilities between the State of Arizona and Indian Tribes.

4. Philosophy

The involvement of Indian Tribes in the development of ADHS policy allows for locally relevant and culturally appropriate approaches to important issues. Therefore, ADHS is committed to working with Indian Tribes to improve the quality, availability, and accessibility to public health services and behavioral health care for American Indians in Arizona.

5. Objectives

In order to fully effectuate this Policy, the ADHS Administration will:

- (1) Establish communication channels with the elected leader of each tribe and the appointed leadership of the Health Department for each Tribe in Arizona. The ADHS Administration recognizes a standing goal of working with Tribes is to increase their knowledge and understanding of ADHS programs and policies.
- (2) Seek timely consultation with Indian Tribes to discuss potential changes to high level policy that would have a significant impact on Indian Tribes.
- (3) Allow for consultation with Indian Tribes in the development of new policy with substantial Tribal implications.
- (4) Coordinate within the Agency to ensure consistent application of the Tribal Consultation Policy.

6. Principles

Trust among ADHS and Indian Tribes is an indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis. The ADHS Administration, guided by the Native American Liaison, shall use the guidelines in Section 7 to determine the nature and extent of consultation that should occur to ensure that the intent of this Policy is satisfied.

Consultation occurs whenever the ADHS Director and Tribal Official(s), and/or their designees, engage in oral or written correspondence to discuss an issue. Consultation with a single Indian Tribe will not substitute for consultation with other Tribes on issues that may affect more than one Tribe.

ADHS staff persons who have a role in the development or implementation of policy substantially affecting Indian Tribes and American Indians in the State of Arizona shall understand the purpose of the ADHS Tribal Consultation Policy, its expectations, and its anticipated outcomes.

7. Consultation Process

ADHS engages in consultation with Indian Tribes about policy issues at a variety of levels through a variety of methods to facilitate Tribal consultation on policies that directly affect Indian Tribes and American Indians in Arizona.

A. New or Changing Policy or Program Implementation

- (1) When it appears that a new or changed ADHS policy may be needed, the ADHS Administration shall consider whether the policy change is likely to have a significant impact on Indian Tribes in the State of Arizona.
- (2) If an issue is identified that is likely to have a significant impact on Indian Tribes in the State of Arizona, the ADHS Administration shall provide timely written notice to Arizona Indian Tribes soliciting feedback and recommendations regarding the issue. Such solicitations shall be directed to Tribal leaders explaining the background, describing the proposed action, and requesting a response within a given timeframe.
- (3) If a Tribal elected or appointed official requests additional information or provides feedback regarding an issue, the ADHS Administration shall communicate, verbally or through written correspondence, with the official to provide a timely and substantive response.
- (4) Face-to-face consultation sessions may be scheduled. Such sessions may be scheduled as a single statewide meeting, or in conjunction with other statewide meetings.
- (5) The ADHS Administration may also provide written notice and a solicitation for feedback to non-Tribal organizations such as the Advisory Council on Indian Health Care, the Inter Tribal Council of Arizona, the Indian Health Service Area Offices in Arizona and Urban Indian Health Programs. Such communications do not substitute for direct communication with the Indian Tribes in Arizona.

B. Ongoing Consultation

- (1) The ADHS Administration will participate in HHS regional consultations, and, as requested, in consultation meetings sponsored by HHS agencies, the Indian Health Service or Indian Tribes.
- (2) The ADHS Administration will provide an opportunity for submission of written comments during any period of ongoing consultation.
- (3) The ADHS Administration will continue to meet regularly with Indian Tribes in the State of Arizona. To the extent issues of general

application are discussed in such meetings, the Native American Liaison or other designated ADHS staff will provide follow-up, as appropriate.

8. Joint Tribal/State/Federal Workgroups

A. Joint Tribal/State/Federal Workgroups and Task Forces

ADHS may establish or participate in workgroups, task forces or other groups or committees with Indian Tribes and others to address issues affecting Indian Tribes and American Indians in Arizona.

B. Limitations

Interaction with joint tribal/state/federal workgroups will not take the place of Tribal consultation. Instead, this interaction is intended to enhance the consultation process by gathering individuals with extensive knowledge of particular policy, practice, issues, or concerns to work collaboratively and offer recommendations for consideration by the ADHS Administration.

9. Effective Date

This Policy is effective on the date of signature by the ADHS Director.

10. Summary

The ADHS Administration views Tribal consultation as a dynamic process. Joint effort between the Indian Tribes, the ADHS Director, the Native American Liaison, and ADHS divisions, bureaus, and offices will promote the objectives of the Tribal Consultation Policy. Together they will further consistent implementation of the Policy and work to ensure that the Policy plays a meaningful role in addressing issues affecting Indian Tribes and American Indians in the State of Arizona.

Approved by Susan Gerard, Director, on 9/01/06

Appendix A:

The special relationship between the Federal Government and Indian Tribes is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

- The Snyder Act, P.L. 67-85
- Older Americans Act of 1965, P.L. 89-73 as amended
- Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended
- Native American Programs Act of 1974, P.L. 93-638, as amended
- Indian Health Care Improvement Act, P.L. 93-644, as amended
- Social Security Act, Titles IXX, XX, XXI
- Unfunded Mandates Reform Act of 1995, P.L. 104-4
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193
- Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994
- Presidential Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998
- Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000
- Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004